

Julie N. Nong (SBN 208013)  
NT Law Group  
2600 W. Olive Ave., 5th Fl., #647  
Burbank, CA 91505  
Tel: (888) 588-0428  
Fax: (888) 588-0427  
Email: julienong@ntlawgroup.com

Attorneys for Plaintiff Anna Kihagi

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ANNA KIHAGI, an individual,

Plaintiff,

V.

CITY OF WEST HOLLYWOOD,  
CALIFORNIA, a California public  
facilities corporation; ALLISON  
REGAN, a natural person; MICHAEL  
JENKINS, a natural person; JEFFERY  
JONES, a natural person, and  
PHILLIP BRANDENBURG, JR. a  
natural person, and DOES I-10,  
inclusive,

Defendants.

CASE 2: 14-cv-00936-PSG (JEMx)

[Assigned to Hon. Philip S. Gutierrez, District Judge,  
Ct. 880 - Roybal Courthouse, Hon. John E.  
McDermott, Magistrate, Judge, Ct. C - LA - Spring  
Street Courthouse]

**SECOND AMENDED  
COMPLAINT FOR:**

- (1) VIOLATION OF EQUAL  
PROTECTION, 42 USC §  
1983;**
- (2) VIOLATION OF  
SUBSTANTIVE DUE  
PROCESS, 42 USC § 1983;**
- (3) VIOLATION OF FIRST  
AMENDMENT RIGHT TO  
PETITION, 42 USC § 1983**

**DEMAND FOR JURY**

## INTRODUCTION

1. Plaintiff Anna Kihagi is a manager of various limited liability companies (“LLC”) that own residential rental units in West Hollywood. Kihagi alleges that the Defendants, the City of West Hollywood and various City officials, arbitrarily and maliciously singled her out in the enforcement of building, property maintenance, construction and other ordinances in an unequal and vindictive manner so as to deny her rights under the Equal Protection Clause, Due Process Clause and rights guaranteed by the First Amendment, all in violation of 42 USC § 1983. In one instance, Kihagi was named a defendant in a criminal complaint alleging that she created a “hostile living environment.” The state court granted Kihagi’s motion to dismiss on the grounds that the ordinance was unconstitutionally vague and unconstitutionally restricted speech protected by the First Amendment.

2. Ms. Kihagi is the principal in several limited liability corporations which own apartment houses located in the City that were, in whole or in part, taken off the rental market as permitted under the Ellis Act, Cal. Gov. Code §§ 7060 *et seq.* This action alleges that the City acted arbitrarily, capriciously and maliciously in its enforcement actions against Plaintiff in violation of the Equal protection and Due Process Clauses of the United States Constitution. The wrongful acts complained of herein are in retribution of Plaintiff exercising her rights under the Ellis Act and thus violative of Plaintiff’s rights under the First Amendment to petition government.

3. Ms. Kihagi is heterosexual female African immigrant. Plaintiff is informed and believes that the City’s unequal and disparate treatment of her is a result of bias on the part of City officials against African female immigrants that are culturally different from the City officials who are largely gay and Caucasian. Gay, white females and males receive substantially faster and more favourable responses to building permit applications and are not cited for the de minimus code violations

1 alleged below. Plaintiff alleges that she has been discriminated against and treated  
2 differently because she is of African descent and an immigrant. Moreover,  
3 irrespective of the Defendants' motives, Kihagi has been singled out for disparate  
4 treatment and her right to equal protection thus violated.

5 4. The City and its employees have a visceral opposition to the Ellis Act  
6 and as a result have targeted Ms. Kihagi for harassment and attempted to criminally  
7 prosecute her for code violations based on arbitrary and capricious interpretations of  
8 the City's Municipal Code. Plaintiff has faced criminal prosecution under at least  
9 one City Ordinance that the state court held was facially unconstitutionally vague  
10 and unconstitutionally infringed on the First Amendment rights of Plaintiff and  
11 others. Plaintiff is being treated differently in connection with enforcement actions  
12 than other property owners in the City. The vendetta against Plaintiff is motivated  
13 by personal animus, discrimination based on race and by City's bureaucratic  
14 hostility to the Ellis Act.

## 15 JURISDICTION AND VENUE

16  
17 5. This Court has subject matter jurisdiction over this action under 28  
18 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

19 6. Venue is proper in the United States District Court for the Central  
20 District of California as all acts complained of occurred within this District.

21 7. Plaintiff, Anna Kihagi, an African-American female, is the managing  
22 member of 1263 North Crescent, LLC ("North Crescent") and Aquat 009, LLC,  
23 which own or manage real property located within the City. She was the defendant  
24 in a criminal action brought by the Defendant for alleged building and construction  
25 violations relative to these properties where all charges were dismissed.

26 8. Defendant, City of West Hollywood, California, is a public facilities  
27 corporation organized and existing pursuant to the laws of the State of California.

1           9.     The City is responsible for the acts of its agents and employees, and is  
2 responsible for the enforcement of its construction, building and property  
3 maintenance codes. The City has adopted as its policy a hostility towards the Ellis  
4 Act and has put into effect ordinances, rules and regulations intended to discourage  
5 persons from exercising their rights under the Ellis Act. All the wrongful acts  
6 complained of herein were authorized by the City and carried out in furtherance of  
7 its unlawful policies.

8           10.    Defendant Allison Regan is an individual employed by the City of  
9 West Hollywood. While so employed, she was responsible for carrying out many of  
10 the wrongful acts complained of herein, including maintaining criminal and civil  
11 actions against Plaintiff in retribution to for the exercise of her rights under the Ellis  
12 Act.

13           11.    Defendant Michael Jenkins is an individual employed by the City of  
14 West Hollywood. While so employed, he was responsible for carrying out many of  
15 the wrongful acts complained of herein, including maintaining criminal and civil  
16 actions against Plaintiff in retribution to for the exercise of her rights under the Ellis  
17 Act.

18           12.    Defendant Jeffery Jones is an individual employed by the City of West  
19 Hollywood. While so employed, he was responsible for issuing citations to Plaintiff  
20 as complained of herein in retribution for the exercise of her rights under the Ellis  
21 Act and a personal animus towards Plaintiff. In addition, Jones delayed the issuance  
22 of permits, delayed inspections and took other official action against Plaintiff  
23 motivated by a personal animus towards Plaintiff and in retribution for the exercise  
24 of her rights under the Ellis Act.

25           13.    Defendant Phillip Brandenburg, Jr is an individual employed by the  
26 City of West Hollywood. While so employed, he was responsible for issuing  
27 citations to Plaintiff as complained of herein in retribution for the exercise of her  
28

1 rights under the Ellis Act and a personal animus towards Plaintiff. In addition,  
2 Jones delayed the issuance of permits, delayed inspections and took other official  
3 action against Plaintiff motivated by a personal animus towards Plaintiff and in  
4 retribution for the exercise of her rights under the Ellis Act.

5 14. Plaintiff is informed and believes and thereon alleges that, at all times  
6 mentioned herein, Defendants were agents and/ or co-conspirators of each of their  
7 co-defendants and in doing the things herein after mentioned, or acting within the  
8 course and scope of their authority of such agents, servants, employees, alter egos,  
9 superiors, successors in interest, joint venturers and/ or co-conspirators with the  
10 permission and consent of their co-defendants and, consequently, each Defendant  
11 named herein, and those Defendants named herein as DOES 1 through 10, inclusive,  
12 are jointly and severally liable to Plaintiff for the damages and harm sustained as a  
13 result of their wrongful conduct.

14 15. Defendants, and each of them, aided and abetted, encouraged, and  
15 rendered substantial assistance to the other Defendants in breaching their obligations  
16 to Plaintiff, as alleged herein. In taking action, as alleged herein, to aid and abet and  
17 substantially assist the commissions of these wrongful acts and other wrongdoings  
18 complained of, each of the Defendants acted with an awareness of its primary  
19 wrongdoing and realized that its conduct would substantially assist the  
20 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

21 16. The true names and capacities of Defendants DOES 1 through 10,  
22 inclusive, are unknown to Plaintiff, who therefore sue said Defendants by such  
23 fictitious names. Plaintiff is informed and believes on that basis alleges that each of  
24 the Defendants designated herein as a DOE is responsible in some manner and to  
25 some extent for the events and occurrences referred to herein and for the damages  
26 suffered by Plaintiff. At such time as Plaintiff learns the true name and capacity of  
27  
28

1 any Defendant named as a DOE herein, Plaintiff will amend her complaint to  
2 identify said defendant, and include accompanying charging allegations.

3  
4 **STATEMENT OF FACTS**

5 17. The population of the City of West Hollywood, according to the most  
6 recent census data, is 34,650. The City has a very strict rent control ordinance and a  
7 large portion of its residents reside in apartments that rent far below market value.  
8 The popular support for rent control within the City by residents that benefit from  
9 the rent control ordinance is reflected by policies and enforcement actions taken by  
10 City officials who enforce the City's municipal code.

11 18. The City has adopted ordinances and regulations that are unlawful and  
12 inconsistent with the Ellis Act even though the City is aware that its attempt to  
13 regulate this area of commerce is pre-empted by State law. Time and again the City  
14 has taken unreasonable positions concerning the proper interpretation of the Ellis  
15 Act and attempted to coerce Plaintiff and others to abide by its patently  
16 unreasonable interpretation of the Ellis Act.

17 19. In response to the enactment of rent control ordinances by cities in  
18 California, including West Hollywood, and a California Supreme Court decision  
19 holding that landlords do not have the right to evict tenants to go out of the business  
20 of being a landlord, the California legislature enacted the Ellis Act. The Ellis Act  
21 provides generally that no local government can compel a rental property owner to  
22 continue to offer their housing for rent and allows rental property owners to exit the  
23 business and after a period of time to re-enter. The Ellis Act is lawfully used by  
24 property owners to take all or a portion of the units in a building off the market,  
25 renovate and then bring the property back onto the market after a proscribed period  
26 of time. The City is so openly and unreasonably hostile to the Ellis Act that it has  
27 enforced its ordinances in an arbitrary and capricious manner against Plaintiff in

1 retaliation for Plaintiff availing herself of the privileges afforded under the Ellis Act,  
2 on the basis of her race and gender and a personal animus towards Plaintiff.

3       20. On July 17, 2008, North Crescent notified the City that it was  
4 withdrawing eight units located at 1263 N. Crescent Heights Blvd from the rental  
5 market pursuant to West Hollywood Municipal Code ("WHMC") Section  
6 17.52.010(15), also known as the "Ellis Provision." At the time of the notification,  
7 four units out of eight were vacant, the prior tenants having voluntarily vacated their  
8 tenancies.

9       21. Pursuant to the Ellis Provision and agreement with the City, the  
10 withdrawal of all units became effective November 14, 2008, except unit 1267,  
11 which has a date of withdrawal of July 18, 2009 because the occupying tenant at this  
12 unit qualified for a one-year extension under Government Code Section 7060.4(b).

13       22. Commencing July 17, 2009, the Plaintiff through North Crescent,  
14 began renovating 1263 N. Crescent Heights. The appropriate work and building  
15 permits were obtained from the City and were displayed as required by law.

16       23. On or about January 11, 2010 and continuing thereafter, the City,  
17 through its Department of Code Compliance, issued several citations for violations  
18 of WHMC §19.30.030(P), Property Maintenance Standards, and WHMC §7.24.010,  
19 Standards for Vacant, Abandoned or Undeveloped Property. These violations were  
20 issued notwithstanding that the Crescent Heights property was never abandoned or  
21 vacant.

22       24. The City singled out Plaintiff for enforcement of a variety alleged code  
23 violations in an arbitrary, capricious and vindictive manner. The City was  
24 motivated a personal hostility towards Plaintiff arising from the exercise of her  
25 rights under the Ellis Act.

26       25. West Hollywood Municipal Code § 19.30.030 (J)(2), for example,  
27 makes it a violation to maintain property "with a lack of adequate landscaping or  
28



1 ground cover sufficient to prevent blowing dust or erosion, or allowing the  
2 landscaping on private property or in a parkway to cause a hazard or inconvenience  
3 to pedestrians using the public sidewalk."

4       26. Pursuant to this Code section, Plaintiff has been cited numerous times  
5 due to a deviation of about ½ inch between the grass on her property and the top of  
6 the sidewalk. Virtually all the other properties on her block and on adjoining streets  
7 have this condition, with many of the properties having much greater deviations.  
8 Notwithstanding that deviations of this type are the general rule rather than the  
9 exception throughout West Hollywood, Plaintiff and Plaintiff alone has been singled  
10 out for enforcement with citations alleging that the condition constitutes a "tripping  
11 hazard."

12       27. Plaintiff is informed and believes that she is the only property owner  
13 within the City of West Hollywood that has received a "tripping hazard" citation  
14 based on the general conditions that formed the basis for the tripping hazard  
15 violations issued to Plaintiff. The issuance of tripping hazard citations was  
16 motivated by a personal animus towards Plaintiff motivated by her decision to avail  
17 herself of her rights under the Ellis Act.

18       28. WHMC §19.30.030(P) makes it a code violation when "A violation of  
19 any other provision of the Municipal Code or the Building Code that pertains to real  
20 property, structures, or which otherwise concerns the public health, safety, and  
21 general welfare."

22       29. WHMC §7.24.010 applies only to vacant, abandoned or  
23 underdeveloped property, and does not apply to property that is undergoing  
24 renovation or rehabilitation.

25       30. Municipal Code § 7.24.010 provides that in the case of vacant or  
26 abandoned buildings, the owner shall maintain such property in "good condition,  
27 keeping it cleaned, watered and weeded. Dead or dying plant material shall be  
28



1 removed.” Plaintiff received a notice of violation on the grounds that there existed a  
2 brown spot on the corner of her law at the Crescent Heights property. Similar  
3 properties on the street had lawns that were completely un-watered with dead grass.  
4 Moreover, properties throughout the City have front yards consisting totally of dead  
5 grass and dirt, but are not cited. Plaintiff alleges that the issuance of the “dry spot  
6 on the lawn” citation was issued based on a personal animus towards Plaintiff and  
7 was arbitrary and capricious.

8 31. Plaintiff alleges that Plaintiff is the only person in the history of the  
9 City that has received a citation for the type of condition that existed on her property  
10 and that she was singled out and targeted due to a personal animus towards her  
11 motivated in part by the City’s opposition to the Ellis Act and in retribution for  
12 Plaintiff availing herself of her rights under the Ellis Act.

13 32. All work was completed at North Crescent Heights in early 2012. In  
14 2012, the City commenced criminal proceedings against the Plaintiff for a number  
15 of citations that were issued in prior years but never resolved, many of which are  
16 described above.

17 33. The citation based on trash accumulating in the back yard, a citation  
18 which later became the subject of a criminal action, was based on construction  
19 materials being stacked in a paved area for the trash cans are designed to be placed.  
20 The area is not visible from the street. The City does not issue citations for the  
21 condition on Plaintiff’s property and would not have issued the trash accumulation  
22 citation but for its animus towards Plaintiff, discrimination based on race and gender  
23 the City’s visceral opposition to the Ellis Act and persons who avail themselves of  
24 their privileges under the Act.

25 34. To resolve the alleged criminal citations based on Code violations, the  
26 City and the Plaintiff entered into a deferred prosecution agreement to resolve the  
27  
28

1 criminal citations. The term of the agreement was 18 months and would expire on  
2 November 12, 2013. All charges were ultimately dismissed against Plaintiff.

3 35. Just prior to the expiration of the deferred prosecution agreement, the  
4 City made an ex parte application to the Court in an attempt to revoke the  
5 agreement. The City alleged that the Plaintiff was either engaging in unpermitted  
6 construction at other properties, or that the properties were being maintained in  
7 violation of the property maintenance code.

8 36. The Court denied the City's application for ex parte relief. The Court  
9 further found that Plaintiff had not violated the deferred prosecution agreement.  
10 The City petitioned the Superior Court to find Plaintiff in violation of the deferred  
11 prosecution agreement in bad faith and without cause.

12 37. On or about July 18, 2013, the City approved a building permit  
13 application for 1231 N. Vista, a property in which the Plaintiff is the managing  
14 director. The approved building permit allowed for minor improvements to the  
15 bathrooms and kitchen, replacement of the front door, replacement of closet doors  
16 and replacement of water heater enclosure.

17 38. On or about July 31, 2013, the property was inspected by Code  
18 Compliance Officer Jeffrey Jones. During his inspection, Mr. Jones alleged that he  
19 observed a property maintenance code violation at the 1231 N. Vista property. Mr.  
20 Jones alleged that the N. Vista property's parkway contained a tripping hazard, as  
21 well as lack of landscaping and overgrown and dead vegetation all in violation of  
22 WHMC property maintenance requirements. He sent a warning notice to the  
23 Plaintiff concerning these alleged code violations.

24 39. This warning was issued notwithstanding that the same tripping  
25 hazards existed at the property that was adjacent to 1231 N. Vista in addition to  
26 many, many other properties in the City.  
27  
28

1           40. On or about August 13, 2013, Mr. Jones returned to the property and  
2 observed that no corrective action had been taken concerning the tripping hazard on  
3 the parkway, nor with the removal of the vegetation and plant material. On or about  
4 August 13, 2013, Mr. Jones issued a notice of violation to the Plaintiff concerning  
5 the alleged tripping hazard.

6           41. On or about August 15, 2013, Mr. Jones inspected real property located  
7 at 1220 N. Formosa, a property managed by an LLC in which the Plaintiff is  
8 managing director. On or about August 15, 2013, Mr. Jones issued a citation for a  
9 “tripping hazard” on the parkway, and for failure to properly landscape the property.  
10 The condition for which the tripping hazard was issued is common to all properties  
11 throughout the City and Plaintiff was arbitrarily singled out for enforcement. The  
12 City never writes tripping hazard citations based on the condition that existed on the  
13 property. In fact, the no reasonable person would ever characterize the condition as  
14 constituting a tripping hazard. Mr. Jones issued the tripping hazard citation based  
15 on his personal animus towards Plaintiff stemming initially from his personal  
16 opposition to Ellis Act conversions. On information and belief, Mr. Jones has never  
17 cited another property for maintenance of a tripping hazard based a condition similar  
18 to the condition that existed on 1220 North Formosa even though similar conditions  
19 are common throughout the City.

20           42. Properties that are adjacent to 1220 N. Formosa, for example, have  
21 conditions similar to the condition that Mr. Jones alleged a tripping hazard but have  
22 never been cited. The nature of the landscaping violations and trip hazards was that  
23 the soil level had to be raised about ¼ inch to the same level as the concrete  
24 walkway.

25           43. Defendant and City Official Jeffery Jones is responsible for writing  
26 citations alleging the tripping conditions complained of herein. The conditions on  
27 the properties that led to the so-called tripping violations were the same conditions  
28

1 that existed on virtually all other properties on the same streets. The relevant  
2 section of the Municipal Code that was violated prohibits unsafe conditions and  
3 makes no mention of deviations between the grass line and surrounding cement.  
4 Given the condition on the property for which the citations were issued, no  
5 reasonable person could conclude that a public safety hazard existed. The numerous  
6 trip violation citations concern conditions common in the neighbourhood yet no  
7 other persons have been cited for this condition.

8 44. On another occasion in the summer of 2013, Mr. Jones and another  
9 inspector, Phillip Brandenburg, inspected 1237 N. Orange, a property that is owned  
10 by a LLC for which Plaintiff is the managing director. They inspected the interior  
11 stairs and hand railings to determine if these items were of the proper size. They  
12 also inspected a small set of stairs leading to the parking lot. The exterior rear  
13 staircase measures 10 feet by 5 feet. The inspectors individually measured 15 steps  
14 to determine if each step, which was required by WHMC to be 7 inches high and 11  
15 inches wide, was in compliance. Two of the stairs did not meet these requirements,  
16 and were promptly repaired. They then measured each rail, of which there were  
17 over 100, to determine if each rail was 4 inches apart. Four rails did not meet this  
18 requirement. These were promptly repaired. When the Plaintiff made an  
19 appointment to have the property re-inspected, neither Mr. Jones nor Mr.  
20 Brandenburg showed up at the appointed time.

21 45. Indeed, the City has time and again cancelled or missed appointment to  
22 approve improvements to Plaintiff's properties. These cancelled and missed  
23 appointments were motivated by an animus towards Plaintiff and an intention by the  
24 City to make doing business with the City as difficult as possible. Plaintiff has  
25 suffered substantial injury as a result of the City's intentional delays in the form of  
26 lost income, increased expenses, additional financing expenses and other economic  
27 damages.

1           46. Defendant and City Official Phillip Brandenburg time and again  
2 delayed and failed to appear for inspections of construction work inspection  
3 appointments. The delays have caused increased construction costs and longer  
4 vacancy periods. On information and belief, these delays and missed appointments  
5 are motivated by a personal hostility towards Plaintiff who is being singled out for  
6 disparate treatment. The delays have caused economic injury in the form of  
7 increased construction costs and delays in being able to rent my properties.

8           47. The alleged stair and stair rail violations that existed on Plaintiff's 1237  
9 North Orange property were *de minimus* and technical. Violations such as the ones  
10 alleged against are never enforced against other property owners in the City.  
11 Plaintiff alleges that the only reason that she was cited for the stair and stair rail  
12 violations are that Mr. Jones and Mr. Brandenburg have a personal animus towards  
13 Plaintiff stemming from their hostility to Ellis Act conversions and their prior  
14 dealings with Plaintiff. Mr. Jones and Mr. Brandenburg would not have cited any  
15 other similarly situated person or property for these violations. They would not  
16 have cited Plaintiff if it were not for Plaintiff being an immigrant of African descent  
17 and their personal animus and resentment towards her.

18           48. The requirement that permits be obtained for work on dwellings has  
19 been unevenly enforced against Plaintiff. Jeffrey Jones has issued citations for work  
20 without a permit while at the same time not requiring permits for work on adjacent  
21 properties. In one case, a worker was taking down outdoor fixtures providing shade  
22 to windows. Plaintiff has witnessed similar work on an adjacent property and the  
23 City has not required a construction permit. This type work is routinely considered  
24 *de minimus* by the City and no permits are required. Plaintiff alleges on information  
25 and belief that Jones and the City have a vendetta against Plaintiff and have  
26 enforced the permit requirement in an arbitrary and disparate manner.

1           49. At the first sentencing hearing on revocation of the deferred sentencing  
2 agreement in the fall of 2013, the Defendant attempted to use the incidents described  
3 above as a basis for revocation of the agreement and to have the Plaintiff sentenced  
4 for violating the deferred sentencing agreement.

5           50. The state court rejected the City's argument and found that the nature  
6 of the work and the type of workers that needed to be involved showed that  
7 Plaintiff's efforts were diligent and reasonable. The City's attempt to revoke the  
8 deferred sentencing agreement was motivated by discrimination based on race and  
9 gender and a personal animus towards Plaintiff. The City's actions were malicious,  
10 arbitrary and capricious.

11           51. Moreover, at the hearing initiated by the City to revoke the deferred  
12 sentencing agreement, the Court found against the City. The state court found that  
13 the Plaintiff's efforts were diligent and reasonable and rejected the City's position  
14 that Plaintiff should be jailed. The Court found that the Plaintiff had complied with  
15 the Building Code by obtaining the proper building permits, thus vindicating the  
16 Plaintiff's position. The City acted maliciously and without probable cause in  
17 initiating the hearing where they sought to revoke the deferred sentencing  
18 agreement. The state court further found that the City acted unreasonably in failing  
19 to show up for appointments to approve work that had been performed. Plaintiff  
20 alleges that the City has a practice and pattern of delaying construction on Plaintiff's  
21 properties solely due to personal animus vindictiveness towards Plaintiff.

22           52. In 2013, an attorney representing the City approached tenants at the  
23 Crescent Heights building, Diana Dominguez and Logan Yuzna, and told the tenants  
24 that they could obtain a rent reduction if they made a complaint. In fact, there were  
25 no grounds for the tenants to receive a rent reduction and the attorney representing  
26 the City was aware of the fact. After the complaint was filed, an internal hearing  
27 was scheduled and the complaining tenants recruited by the City failed to show up.

1 The Administrative Law Judge presiding at the hearing dismissed the complaint and  
2 stated on the record that: “No one would have believed testimony of the tenants that  
3 they were tenants.”

4 53. The actions taken by the attorney for the City were done with the  
5 knowledge and ratification of the City and motivated by a personal animus towards  
6 Plaintiff and were malicious. As a result of the City’s misconduct, Plaintiff incurred  
7 attorney fees and other damages.

8 54. In another matter, *City of West Hollywood v. Anna Kihagi* (*City v.*  
9 *Kihagi I*), Los Angeles Superior Court Case No. SC100932, the City filed a civil  
10 action. Unable to prove its case, the City and Plaintiff entered into a settlement  
11 agreement whereby Plaintiff would pay nothing, provided there were no further Ellis  
12 Act violations. If any further violations did occur, Plaintiff would pay \$10,000. The  
13 trial court retained jurisdiction to enforce the settlement. In 2012, the City sought to  
14 find Plaintiff in violation of the Ellis Act and to find her in violation of the  
15 settlement agreement. On appeal, the Court of Appeal found that the City’s  
16 proffered interpretation of the settlement agreement and the Ellis Act was patently  
17 unreasonable and reversed, holding that the City had not presented any evidence the  
18 Plaintiff violated the Ellis Act and that its construction of the Ellis Act and  
19 settlement agreement was unreasonable.

20 55. The prosecution of Case No. SC100932 was vindictive and  
21 discriminatory from the outset. The underlying alleged violations were without  
22 merit and never would have been prosecuted if it were not for the City’s animus  
23 towards Plaintiff and the City’s determination to retaliate against Plaintiff for  
24 exercising her rights under the Ellis Act.

25 56. As other evidence of the City maliciously singling out Plaintiff are the  
26 events in the hearings associated with *People v. Kihagi*, Case No. 1BV01333.  
27 Plaintiff prevailed in this action and did not suffer a criminal conviction. In that  
28



1 case, the City alleged as criminal various code violations regarding the upkeep of  
2 her properties. The code violations alleged against her involved conditions on her  
3 property that were common to all properties in the neighbourhood although no other  
4 property owners received code citations, much less criminal prosecution. The code  
5 violations that morphed into criminal prosecution included the following:

- 6 a. Violation of Municipal Code § 7.24.010 provides the owner shall  
7 maintain such property in “good condition, keeping it cleaned,  
8 watered and weeded. Dead or dying plant material shall be  
9 removed.” Plaintiff received a violation for having a brown spot  
10 on her lawn when other properties on the street had completely  
11 dry grass;
- 12 b. Municipal Code § 19.30.030 (J)(2) makes it a violation to  
13 maintain property "with a lack of adequate landscaping or  
14 ground cover sufficient to prevent blowing dust or erosion, or  
15 allowing the landscaping on private property or in a parkway to  
16 cause a hazard or inconvenience to pedestrians using the public  
17 sidewalk." Pursuant to this section, Plaintiff was charged with  
18 having a lawn with about a ¼ deviation from the sidewalk.  
19 Plaintiff received a violation became the subject of criminal  
20 prosecution although literally all other properties in the  
21 neighborhood have deviations between the level of the grass and  
22 sidewalk exceeding ¼ inch and have never received a citation.  
23 The prosecution for this offense was vindictive, selective and  
24 made in retribution for Plaintiff exercising her rights under the  
25 Ellis Act.
- 26 c. Municipal Code § 7.24.010(e) requires property owners to  
27 “[s]ecure, lock and close all buildings and structures upon the  
28

1 property, place or area in accordance with presently applicable  
2 FHA-standards, subject to the approval of the Building Official.  
3 Pursuant to this section, Plaintiff was criminally prosecuted for a  
4 violation that a window on the Crescent Heights property was  
5 left open ¼ inch, despite the fact that the ordinance applies to  
6 vacant buildings and Plaintiff's property was not vacant.  
7 Moreover, application to this ordinance to a window open ¼ inch  
8 is arbitrary and capricious and makes no sense. Plaintiff was  
9 singled out for prosecution due to personal animus towards  
10 Plaintiff and as retribution for exercising her rights under the  
11 Ellis Act.

- 12 d. Municipal Code § 7.24.010(c) requires the owner of a vacant  
13 building to "[s]ubmit a "Letter of Agency" to the West  
14 Hollywood Sheriff's Station every thirty days and post "No  
15 Trespassing" signs as required so that members of the Sheriff's  
16 Department are empowered to remove all unauthorized persons  
17 from the property. The "letter of agency" is a letter informing  
18 the Sheriff's Department of the person responsible for the  
19 property. The statute is arbitrary and designed to harass Ellis Act  
20 properties to the extent that it requires a new letter every 30 days  
21 even if there has been no change in the responsible party.  
22 Plaintiff was subject to criminal prosecution for violation of the  
23 ordinance. The prosecution was selective in the sense that no  
24 other person in the history of the City has been criminally  
25 prosecuted for violating this provision of the ordinance.  
26 e. The City also sought to further prosecute Plaintiff for a myriad  
27 of other technical violations in a selective and vindictive manner  
28

1 motivated by a personal animus towards Plaintiff and in  
2 retaliation for exercising her rights under the Ellis Act.

3 f. In this criminal prosecution, Plaintiff entered into an agreement  
4 that the allegations would not be pursued provide no further  
5 violations occurred, provided that the City first give notice of  
6 any alleged violations and an opportunity to cure. The City  
7 unsuccessfully sought to pursue the prosecution and sentencing  
8 on the initial allegations based on code violations that occurred  
9 after the criminal prosecution was initiated. The state court  
10 judge rejected the City's attempt to use the subsequent violations  
11 to trigger prosecution of the initial violations on the grounds that  
12 the City had not provided notice to Plaintiff's attorney in the  
13 criminal case. The failure to provide Plaintiff's attorney notice  
14 and opportunity to cure the subsequent violations was calculated  
15 and intended to deprive Plaintiff the opportunity to cure the  
16 alleged subsequent violations.

17 57. The misconduct complained of herein is ongoing. In another civil  
18 action, *Sheehe v. Kihagi*, Case SC 119079 ("the *Sheehe* action"), the City incited a  
19 former tenant to bring a meritless action against Plaintiff and then the City  
20 intervened to advocate patently unreasonable and unlawful positions against  
21 Plaintiff. The City's unlawful conduct is motivated by a personal animus towards  
22 Plaintiff and hostility towards the Ellis Act. The City's conduct in the *Sheehe*  
23 matter is ongoing and continuing. Plaintiff will seek leave to amend when the facts  
24 and extent of the Defendants conduct become better known.

25 58. In *Sheehe*, the City located a former tenant and encouraged and urged  
26 that he file a meritless action against Plaintiff for failing to offer to re-rent a unit  
27 formerly occupied by him. The tenant's lawsuit was encouraged and directed by  
28

1 Allison Regan and the City, even though it is without merit. It is on the third  
2 amended complaint, which is presently the subject of a demurrer because the action  
3 is barred by the statute of limitations.

4 59. After encouraging and directing Sheehe to file a meritless action, the  
5 City under the direction of Allison Regan intervened in the lawsuit and sought to  
6 expand the its scope. Regan and the City orchestrated the *Sheehe* action by  
7 soliciting Sheehe and all along planned to expand the scope of the lawsuit to pursue  
8 the position that the court of appeal rejected in *City v. Kihagi I*. In *Sheehe*, the City  
9 urged took the same “absurd” position that was earlier rejected by the court of  
10 appeal. When the trial court issued an ambiguous oral ruling, the City, in bad faith,  
11 submitted to the trial court a Notice of Ruling that enjoined Crescent and myself  
12 from renting or leasing certain units unless first complying with the Ellis Act. These  
13 were the same units that the court of appeal earlier found were outside the scope of  
14 the Ellis Act restrictions.

15 60. In the *Sheehe* action, the City attempted to place Ellis Act rent control  
16 restrictions on units even though the court of appeal squarely held that the specific  
17 units were not subject to the Ellis Act rent control restrictions. The non-conforming  
18 Notice of Ruling is that it sought to bring within the scope of Ellis Act restrictions  
19 the same units that were found not to be subject to Ellis Act restrictions in an earlier  
20 court of appeal opinion. The City and Allison Regan are presently prosecuting the  
21 *Sheehe* action premised on the precise same position that was found to be “absurd”  
22 in *WH v. Kihagi I*.

23 61. In *Sheehe*, Plaintiff was forced to incur attorney fees to file an appeal of  
24 the intentionally misleading Notice of Ruling and then to seek a stay via a writ of  
25 supersedeas and application for temporary stay. On December 4, 2014, the court of  
26 appeal granted the writ and stayed all proceedings in *Sheehe*. The proceedings in  
27  
28

1 the court of appeal involve the City prosecuting the same position that was found to  
2 be “absurd” in *WH v. Kihagi I*.

3 62. In *People v. Kihagi*, Case No. 4WA32199, the City recently filed  
4 criminal charged against Plaintiff violation of West Hollywood Municipal Code §  
5 17.52.090. Section 17.52.090 makes it a criminal offense to have “caused,  
6 permitted, aided, abetted, or suffered the harassment of a tenant in a manner that  
7 was likely to create a hostile living environment or cause a reasonable tenant  
8 similarly situated to vacate the rental housing unit.” There is no allegation that a  
9 tenant vacated a unit due to any unlawful acts of Plaintiff and the statute  
10 unconstitutional on its face. First, it is unconstitutionally vague in the use of the  
11 term “harassment . . . likely to create a hostile living environment.” *Baba v. Board*  
12 *of Sup'rs of San Francisco*, 124 Cal. App. 4th 504, 506 (Statute making a criminal  
13 offense to threaten to evict or recover possession in connection with Ellis Act  
14 conversion held unconstitutional). In *Baba*, the California Court of Appeal held that  
15 an ordinance substantially similar to § 17.52.090 is unconstitutional on its face. It  
16 makes criminal it a criminal offense to have “permitted . . . conditions likely to  
17 create a hostile living condition.” Second, the statute impermissibly makes unlawful  
18 speech protected by the First Amendment. The prosecution of this criminal action  
19 was done at the direction of defendant Allison Regan maliciously and motivated by  
20 a personal animus towards Plaintiff.

21 63. On about January 6, 2015, the Court in *People v. Kihagi*, Case No.  
22 Case No. 4WA32199, granted Kihagi’s motion to dismiss on the grounds that to §  
23 17.52.090 is facially unconstitutionally because the ordinance is unconstitutionally  
24 vague and also makes criminal speech protected by the First Amendment.

25 64. The complaint in *People v. Kihagi*, Case No. 4WA32199, also alleged  
26 four violations of West Hollywood Municipal Code Section 17.28.010(b), failure to  
27 register rental units after a vacancy. These charges were filed even though Kihagi  
28

1 had timely provided the City Attorney with all the required registration information.  
2 Kihagi was singled out for enforcement and was factually innocent of the charges.  
3 After the Court dismissed the criminal charges related to tenant harassment, the  
4 People voluntarily dismissed the § 17.28.010 (b) charges, barring any further  
5 prosecution for the alleged offenses. The charges alleging violations of the  
6 registration requirements against Kihagi were the result of her being singled out and  
7 discriminated against. The charges were brought at the urging of Regan and other  
8 City officials acting in their investigative rather than prosecutorial capacity. The  
9 West Hollywood City Attorney was not the office assigned to prosecute the criminal  
10 charges brought in *People v. Kihagi* and had no role other than in an investigative  
11 capacity.

12 65. On information and belief, Regan, either directly or indirectly through  
13 others, solicited tenants and encouraged them to embellish or fabricate stories to the  
14 effect that Plaintiff created a “hostile living condition” for the purpose of bringing  
15 criminal charges. This criminal case was orchestrated by Regan who encouraged  
16 and persuaded witnesses to give embellished and misleading statements.

17 66. The City and Allison Regan have recently initiated yet another civil  
18 proceeding to collect fines and assessments in connection with the citations  
19 complained of herein. Many of the citations were six years old and the notices of  
20 fine were given in 2004. The action is styled *City of West Hollywood v. Kihagi*,  
21 Case No. SC122915. The liability for many of these citations was resolved in an  
22 earlier settlement of a civil action. This latest civil action is brought maliciously and  
23 without cause to believe that Plaintiff is responsible for payment. Furthermore, the  
24 liability on the citations is barred by the statute of limitations. Lastly, the fines  
25 associated with the citations are collectible only against the property and not  
26 Plaintiff as Plaintiff does not own any of the properties in question. This civil action  
is brought maliciously and without cause and the City and Regan know it.

COUNT I

(Violation of Equal Protection, 42 USC § 1983)

(Against All Defendants)

67. Plaintiff incorporates by reference all the preceding paragraphs as full set forth herein.

68. Plaintiff alleges that the Defendants have enforced building codes and other relevant laws in an arbitrary, capricious and discriminatory manner as more specifically alleged herein. The Defendants have enforced the City's laws in a uniquely discriminatory fashion against Plaintiff motivated by a personal animus towards Plaintiff and the fact that she is of African descent and in part by a bureaucratic hostility towards the Ellis Act.

69. As a result of the City's unequal enforcement of its laws and personal vendetta, Plaintiff has been suffered damages in delay in completing her Ellis Act conversion, incurring attorney fees and having habitable structures held off the market. She has also incurred attorney fees in defending criminal proceeding initiated maliciously and suffered extreme emotional distress.

70. Plaintiffs have also selectively prosecuted civil and criminal actions as more fully above. The ordinances that Defendants seek to enforce are unconstitutionally vague on their face. Plaintiff has targeted for disparate treatment in that similarly situated persons are not prosecuted or cited for the violations and charges described above based on the conduct alleged against Plaintiff.

COUNT II

(Violation of Substantive Due Process, 42 USC § 1983)

(Against All Defendants)



71. Plaintiff incorporates by reference all the preceding paragraphs as full set forth herein.

72. Plaintiff alleges that City and other Defendants have enforced building codes and City ordinances and other relevant laws in an arbitrary, capricious and discriminatory manner as more specifically alleged herein, which has denied Plaintiff's right to substantive due process, i.e., to be free of arbitrary capricious enforcement actions by the City.

73. As a result of the Defendants unequal and arbitrary and capricious enforcement of its laws and personal vendetta, Plaintiff has been suffered damages in delay in completing her Ellis Act conversion, incurring attorney fees and having habitable structures held off the market. She has also incurred attorney fees in defending criminal and civil proceedings initiated maliciously and suffered extreme emotional distress.

## COUNT III

(Violation of First Amendment Rights, 42 USC § 1983)

(Against All Defendants)

74. Plaintiff incorporates by reference all the preceding paragraphs as full set forth herein.

75. The First Amendment states: “Congress shall make no law respecting ... the right of the people . . . to petition the Government for a redress of grievances.” Included within Plaintiff’s rights is her right to pursue her rights under the Ellis Act and pursuit of those rights is a constitutionally protected activity.

76. In retaliation for Plaintiff exercising her rights under the Ellis Act and the City's vehement opposition to the Ellis Act, the City and the other Defendants have retaliated against Plaintiff by enforcing ordinances and other regulations in an

1 arbitrary, capricious manner as alleged herein. In so doing, the Defendants have  
2 chilled and discouraged Plaintiff from exercising her rights under the Ellis Act.

3 77. As a result of the City's and other Defendant's arbitrary, capricious and  
4 vindictive enforcement actions against Plaintiff, Plaintiff has suffered injury.  
5 Renovation on of her apartment buildings has been delayed and the properties have  
6 experienced long periods of vacancy and diminished rental income as a result of the  
7 City's wrongful conduct as alleged herein. Plaintiff has suffered due to missed  
8 opportunities to sell and refinance her properties as a result of the City's wrongful  
9 conduct.

10 78. The City has also attempted to enforce an unconstitutional ordinance  
11 that makes it criminal to cause or even permit a "hostile living environment," as  
12 more specifically alleged above. This ordinance is not only unconstitutionally  
13 vague, it also proscribes constitutionality protected speech.

14 **RELIEF SOUGHT AS TO ALL COUNTS**

15  
16 WHEREFORE, Plaintiff prays that the Court award her the following relief:

- 17 1. For an award of attorney fees pursuant to 42 USC § 1983 and any other  
18 applicable law;  
19 2. For general and special damages according to proof;  
20 3. For punitive damages against the City officials sufficient to deter the  
21 unlawful conduct alleged herein;  
22 4. For costs of suit herein; and  
23 5. For such other relief as the Court deems proper

24 Dated: February 2, 2015

25  
26 NT LAW GROUP

27 /s/ Julie N. Nong

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

Julie N. Nong

Attorney for plaintiff

1 DEMAND FOR JURY TRIAL

2

3

4 Plaintiff hereby demands a trial by jury.

5 Dated: December 8, 2014

6

7

8

9 NT LAW GROUP

10 /s/ Julie N. Nong

11 \_\_\_\_\_

12 Julie N. Nong

13 Attorney for plaintiff

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28